IN THE HIGH COURT OF DELHI

C.R.P.No.41/2000

Sh. Fakhr-ul-Islam ..... Petitioner
! through: Mr. Rajeev Saxena, Advocate

VERSUS

$ Shri Abdul Naim and Ors. ..... Respondents
^ through: Mr. Moinuddin, Advocate for R-1

RESERVED ON: 27.07.2007

% DATE OF DECISION: 16.08.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. This revision petition challenges the orders dated 27.3.99 and 7.8.99 passed by the learned Civil Judge, Delhi.

2. Petitioner was defendant no.2, respondent no.1 was plaintiff, respondent no.2 was defendant no.1 in the original suit. Respondents nos. 3 to 9 are the legal heirs of defendant no.3 in the original suit. I shall be referring to the parties as plaintiff and defendant respectively.

3. Vide impugned order dated 27.3.99, suit filed by

the plaintiff under Section 6, Specific Relief Act, 1877 was decreed and plaintiff was held entitled to the possession of suit property and the printing press lying therein. Vide order dated 7.8.99, noting that in the plaint relief prayed for was limited to the extent of possession of suit property, earlier order dated 27.3.99 was modified and plaintiff was held entitled to the possession of only suit property.

4. Relevant facts necessary to be noted are that plaintiff, Abdul Naim, filed a suit for possession under Section 6 of the Specific Relief Act, 1877, alleging forcible dispossession from the suit property by defendants Nos. 1 to 3. The subject-matter of the suit was property bearing No.2741, Mohalla Nariyan (behind G.B. Road), Delhi.

5. It was inter alia pleaded in the plaint that:-

a) On 1.11.1968, plaintiff entered into a partnership with Fakhr-ul-Islam, defendant no.2 for carrying on the business of printing press. The partnership firm conducted business under the name and style of 'M/s Jayco Printing Press'.

b) Partnership firm was carrying on its business at premises no.2741, Mohalla Nariyan, Delhi i.e. suit

property. Partnership firm was a tenant in the suit property and was paying rent @ Rs.30/- per month to the landlord, Hamid-ul-Islam, defendant no.1.

c) On 2.2.70, partnership between plaintiff and defendant no.2 dissolved A settlement was arrived at. Ex.PW7/1 to Ex.PW7/3 records the said settlement and bears the signatures of both plaintiff and defendant no.2. Plaintiff took over all the rights and liabilities of the partnership firm which included the tenancy rights.

d) After the said dissolution, plaintiff continued running the printing press under the name and style of 'M/s Jayco Printers' as proprietor thereof;

e) Defendant no.2 in connivance with defendant no.1 and 3 on 25.5.1973 wrongfully dispossessed the plaintiff from the suit property.

6. Per contra, defendants no. 1 to 3 denied the averments made in the plaint. In essence, case set up by the defendants no. 1 to 3 is as follows:

a) Defendant no.2 was the tenant in the suit property and was paying rent @ Rs.8/- per month to the defendant no.1.

b) Defendant no.2 was running the printing press

from the suit property under the name and style of 'M/s Jayco Printers' It was a sole proprietorship concern with defendant no.2 as its proprietor.

c) Plaintiff had no concern whatsoever with the suit property, printing press or 'M/s Jayco Printers'.

7. A perusal of the decision of the trial judge as also record of the trial court show that evidence was adduced by the parties in support of their respective case.

8. Plaintiff examined 16 witnesses. Learned Trial Judge has appreciated evidence led by the plaintiff as follows:-

S. No.	Witness	Document proved by the witness	Conclusion arrived at by the learned Trial Judge
1.	PW-2: S.D. Chauhan, Clerk, Standard Type Foundry, Delhi.	Ex.PW2/1 to Ex.PW2/12 (Pg 195-217): Bills showing that certain articles were sold by Standard Type Foundry to 'M/s Jayco Printers' between the dates 17.12.70 to 23.12.73.	These documents show that 'M/s Jayco Printers' was carrying on its business at the suit property.

2.	PW-3: Anwar-ul-Haq, Accountant, Delhi Iron Truck Mfg. Co., Delhi.	i) Ex.PW-3/1 (Pg 387): Bill dated 24.1.70 issued by 'M/s Jayco Printing Press'. ii) Ex.PW-3/2 to Ex.PW3/3 (Pg 389 and 391): Bills dated 25.11.70 and 25.1.72 issued by 'M/s Jayco Printers'.	These bills confirm the fact that prior to 2.2.70, the firm was functioning in the name of 'M/s Jayco Printing Press' at the suit property and thereafter, it was functioning in the name of 'M/s Jayco Printres' at the same address.
3.	PW-8: Papinder Singh, partner, Guru Nanak Paper Mart, Delhi.	Ex.PW8/1 to Ex.PW8/3 (Pg 255 to 259): Bills showing sale of certain articles by Guru Nanak Paper Mart to 'M/s Jayco Printers" between the dates 24.4.70 to 3.7.70.	These bills further supports the case of the plaintiff.
4.	PW-11: R.K. Sehgal, stenographer, M/s Jagan Nath Prem Nath, Delhi.	Ex.PW11/1 (Pg 355): A certificate dated 25.8.1973 issued by M/s Jagan Nath Prem Nath certifying that it used to have business dealings with 'M/s Jayco Printers' which was functioning at the suit property.	Since the certificate is issued in favour of the plaintiff, it lends credence to his case.

5.	PW-12: Arjun Dev, Manager, New Bharat Mfg. Co., Delhi.	Ex.PW-12/1 (Pg 357): A certificate dated 13.8.1973 issued by New Bharat Mfg Co certifying that it used to have business dealings with Abdul Naim (plaintiff) M/s Jayco Printers, 2741, Niaryan Street, Delhi (suit property)	Since the certificate is issued in favour of the plaintiff, it lends credence to his case.
6.	PW-9: Nand Lal, Constable, P.S. Kamla Market, Delhi.	i) Ex.PW9/1 (Pg 403): Copy of FIR dated 2.6.93 registered at the instance of plaintiff against the defendants. ii) Ex.PW9/2 to Ex.PW9/3 (Pg 405 and 407): Copy of D.D. Dated 26.5.73 and 28.5.73.	These documents establish that plaintiff was in possession of the suit property on 25.5.73 and on this date he was forcibly dispossessed by defendants no. 1 to 3.

9. Learned Judge has further noted that oral evidence adduced by the plaintiff also corroborates the version of the plaintiff.

10. Defendants examined 8 witnesses who deposed that there was no oral tenancy between the plaintiff and the defendant no.1. That there was no partnership between plaintiff and defendant no.2. That defendant no.2 was the sole proprietor of 'M/s Jayco Printers'.

11. No documentary evidence was produced by the

defendants.

12. Insofar as evidence led by the defendants is concerned, suffice would it be to note following two discrepancies noted by the learned Trial Judge:-

i) It was the case of the defendants that plaintiff had no concern whatsoever with 'M/s Printing Press'. However, Mohd Sharif in his testimony as DW-5 stated that he had seen the plaintiff working in the press. (His testimony is at page 71 of the trial court record).

ii) Plaintiff had averred that on 2.2.70 i.e. at the time of dissolution of partnership between him and defendant no.2, a settlement was arrived which was recorded in Ex.PW7/1 to Ex.PW7/3 (Pg 159-163). It was further averred that Ex.PW7/1 to Ex.PW7/3 bears the signatures of both plaintiff and defendant no.2. In his testimony as DW-8, defendant no.2 has admitted that said exhibits were prepared by his munshi and that it bears his signatures. (Testimony of DW-8 is at page 76 of the trial court record).

13. Additionally, I note that defendants had not produced any documentary evidence such as bills, cash memo etc to show that defendant no.2 was carrying the

business of printing press under the name and style of 'M/s Jayco Printers". Non-production of any documentary evidence requires an adverse inference to be drawn against the defendants.

14. Noting the rival contentions as also evidence adduced by both the parties, particularly, documentary evidence produced by the plaintiff and the fact that Section 6, Specific Relief Act,1877 provides a remedy of restoring possession on proof that the plaintiff had possession and he has been wrongfully dispossessed, learned Trial Judge decreed the suit of the plaintiff. It has been held that plaintiff has successfully established that he was the tenant in the suit property and that he was forcibly dispossessed from the suit property by the defendants no 1 to 3.

15. Aggrieved by the decision of the learned Trial Court, defendant no.2 has filed the instant revision petition.

16. Learned counsel for the petitioner/defendant no.2 contended that the learned Trial Court has not correctly appreciated evidence led by the defendants. That the learned Trial Court has erred in placing reliance

upon documents such as cash memo, bills etc produced by the plaintiff for the reason said documents were false, fabricated and prepared at the instance of the plaintiff.

17. Scope of challenge in a revision petition is limited. Petitioner cannot call upon this court to re-appreciate the evidence. (See the decisions of the Supreme Court in Ram Dass v Davinder, (2004) 3 SCC 684 and *Kempaiah Vs. Chikkaboramma*, (1998) 6 SCC 667.

18. Having gone through lengthy discussion of evidence, documentary and oral, as contained in the judgment of the trial court, I am satisfied that no fault can be found with the manner in which the evidence has been appreciated by the learned Trial Court.

19. C.R.P. No. 41/2000 is accordingly dismissed.

20. No costs.

August 16 , 2007 PRADEEP NANDRAJOG, J.